



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:) Group Art Unit: 1761
M. DeRaud and A. Gambel)
Serial No: 09/954,491) Examiner: Tran Lien, Thuy
Filed: September 11, 2001)
For: **A METHOD OF CONFIGURING A)
SLICE OF PIZZA-TYPE PIE AND)
AN APPARATUS FOR)
PREPARING A PIZZA-TYPE PIE)**

I, Marc J. Halperin, declare as follows:

1. I make this declaration in support of the application of Mark E. DeRaud and Adam F. Gambel for a patent relating to the folding of pizza (Serial No. 09/954,491).
2. Since 1992, I have been the Culinary Director at the Center for Culinary Development ("the Center") in San Francisco, California, a privately-owned consulting business of which I am a co-founder and a principal. As Culinary Director, I rely upon my formal culinary training, my experience as a chef, and my broad experience in the food industry to provide professional assistance with restaurant concept development, menu development, and new food and beverage product development for the retail consumer market as well as for restaurant and food service environments. My experience at the Center includes developing packaged foods, including pizza, as well as menu items for "fast food" restaurants (known in the industry as quick serve restaurants or QSRs). Several of these products have been successfully commercialized on a national scale.
3. After obtaining undergraduate and graduate degrees from, respectively, Reed College and Boston University, I was formally trained as a chef at École de Cuisine La Varenne in Paris, where I was awarded a Grand Diplôme d'Etudes Culinaires in 1979.
4. My practical experience in the culinary arts includes having served in the following positions: Executive Chef at Bateau Etoile de Champagne (Paris, France), Chef/Instructor at École de Cuisine La Varenne (Paris and Joigny, France), Chef Patissier at Deer

Valley Ski Resort, Park City, Utah, and Chef/Instructor at California Culinary Academy (San Francisco, California). In each of these positions, among other things, I had considerable experience baking and teaching others to bake foods involving dough. I also have significant additional experience in the baking of dough, as a consultant for the Croissant Show (New York, New York) and for Bon Appétit Bakeries (Denver, Colorado.).

5. As part of my work at the Center, I stay abreast of new trends, techniques and developments in the culinary arts by actively participating in professional groups and publications. I write for two leading publications in the food industry, *QSR Magazine* (for the quick serve restaurant industry) and *Food Processing/Food Creation* (for the manufacturing industry). Furthermore, I manage the Center's Chef's Council, through which we consult with approximately eighty prominent chefs from across the United States to study trends in the food industry. I am also a member of the Research Chef's Association and The Chef's Table, both of which help me stay informed of new developments in the food industry. I am a past member of the American Institute of Wine and Food, the San Francisco Professional Food Society, Club Culinaire Français de Californie, Chef's Association of the Pacific Coast, Golden Gate Restaurant Association, and American Culinary Federation.

6. Of the new trends, I have been particularly interested in the developing market for food "on the go" rather than at a table. In fact, I mentioned this developing market in an article titled "Humble Inspirations, Impressive Destinations" for *Food Processing Magazine* in October 2003. The article was also published on the magazine's internet web site (www.foodprocessing.com), and a true and correct copy is attached hereto as Exhibit B. In the article, I described the developing market for fast-foods that are portable enough to become part of the "dashboard dining" trend in which people eat in vehicles. For quite some time, there has also been a corresponding trend in the quick serve restaurant industry to broaden the range of food products offered to consumers as "take out" food that can be consumed easily "on the go." Accordingly, I believe there is a significant unfulfilled need for new food products "on the go."

7. Kimberly Egan, another principal at the Center for Culinary Development, informed me that in April 2003 she met with Adam Gambel to discuss the possible commercialization of folded ready-to-eat single servings of pizza. As a result of Ms. Egan's favorable impression and my interest in the food "on the go" market, we both participated in a second meeting with Mr. Gambel and Mark DeRaud.

8. At the second meeting, in June 2003, Messrs. DeRaud and Gambel presented their ideas for folding pizza, which are illustrated in the drawings attached to this declaration as Exhibit A (hereinafter "the Ideas" and "the Drawings"). With a freshly baked pizza, they demonstrated the folding of single slices, as illustrated in Figs. 1A-1E of Exhibit A. With a paper stock mockup, they also demonstrated the folding of a small round "personal size" pizza, as illustrated in Figs. 3A-3D. They further demonstrated various ways to package the folded slices so that the folded pizza could be eaten crust end first without spillage of sauce, cheese, or toppings. My opinion at that time was and still is that these Ideas are new and innovative. The Ideas provide an elegant way to meet the need for "on the go" pizza while preserving the benefits

of the traditional pizza slice, which is desired by the consumer, and without drastically changing the way to make the pizza.

9. I am well aware of the dripping and oozing that occurs when one folds one half of a slice of pizza over the other half or, alternatively, folds the pointed end of the slice towards the crust end, and then tries to eat it. However, it had never occurred to me as a trained chef (and was not obvious to me) to first fold the pointed end of the slice towards the crust end and then fold one half of the folded slice of pizza over the other half. The combination of these two folds was new and not obvious to me. Further, I did not expect the combination of the two folds to produce a satisfactory result. The same is true of the combination of the two folds using pizza of different shapes, including round, square or rectangular. This combination is a good solution to the well-recognized problem of the dripping and oozing that occurs with single servings of pizza. Furthermore, this solution maintains the benefits of freshly baked pizza, which is desired by the consumer. No one to my knowledge has previously developed a successful way to configure traditionally baked pizza so that it can be eaten while not seated at a table without spillage of the cheese, sauce and toppings. In addition, no one to my knowledge has tried to commercialize a pizza folded in the manner depicted in the Drawings. In my opinion, these Ideas have significant potential to be the basis of a successful entrant in these "on the go" markets for pizza.

10. In addition, I had never seen or been aware of a pizza, where one or more strategic portions of the pizza are free of cheese and toppings. These strategic portions include (i) a central portion in a round pizza (Exhibit A, Figs. 7A-7D), (ii) rectangular strips in a square pizza (Exhibit A, Figs. 8A-8D), and (iii) end portions in a personal-size pizza. It is my understanding that these strategic portions (free of cheese and toppings) help to conduct the combination of folds of a slice from each respective pizza shape and size. (See Exhibit A, Figs. 4A-5C.) Furthermore, it was not obvious to me to create a pizza with such portions free of cheese and toppings if cheese or toppings are elsewhere on the pizza. To the contrary, the consumer probably would not accept a pizza with cheese and toppings missing from a significant area, absent the folding. Moreover, although pizza can be configured to have different combinations of toppings (e.g., half cheese and half cheese and pepperoni) in different sections of the pizza (e.g., halves or quarters), such pizzas would have the same toppings consistently throughout any particular section. The purpose of such combination pizzas, after all, is to allow consumers with differing preferences to order one pizza having different combinations of toppings, where a slice has the desired combination of toppings consistently from center to crust. Combination pizzas, therefore, solve a very different problem than the one solved by the Ideas.

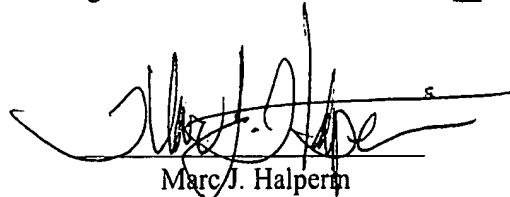
11. In the October 2003 article discussed above in Paragraph 6, I was so impressed by the Ideas that I made a favorable reference to the novel pizza folding Ideas presented by Messrs. DeRaud and Gambel. Neither Mr. Gambel nor Mr. DeRaud either requested the reference or were aware in advance that I had written the article. I published the same article as my "Marc's Trend Corner" column for December 2003 on the Center for Culinary Development's website (www.ccdsf.com). Both publications of the article contain one correction. In early 2004, Mr. Gambel contacted me upon learning of the article and requested that I correct language which

erroneously read in part: One fellow I know actually has a patent on a way to fold a pizza slice. As corrected, the sentence now reads in part One fellow I know actually has a patent pending on a way to fold a pizza slice. From the beginning, Messrs. DeRaud and Gambel had told me that the patent application was still pending.

12. When I met with Messrs. DeRaud and Gambel in June 2003, we discussed the possibility of the Center for Culinary Development providing services in the development and marketing of pizza products using the folding Ideas they had presented. They asked if the Center would be amenable to providing those services in exchange for a percentage of the fees or royalties to be charged to a licensee in the event of a patent issuing rather than a fee to be billed for the Center's services. Though we do not typically make such arrangements, the Ideas presented to us were promising enough that Ms. Egan and I indicated that we would be interested in exploring such an arrangement. Since then, we have not had further substantive discussions concerning that potential arrangement, and there have been no discussions concerning its possible terms other than as indicated above. My opinions are not influenced by any potential arrangement between the inventors or their assignee and the Center for Culinary Development. Moreover, consideration for my opinion is not contingent upon the issuance of a patent to the inventor.

13. In September 2004, Mr. Gambel asked me to serve as an expert witness in support of the patent application referred to above. I agreed to do so, and the only compensation that I am receiving in relation to this declaration is \$200 per hour, which I am charging for my time in this connection. This is the same rate, which the Center for Culinary Development uses for my time in its calculation of the Center's fee for client projects.

I declare that the foregoing is true and correct. I understand that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C./1001) and may jeopardize the validity of the application or any patent issuing thereon. Executed on October 22 2004 at San Francisco, California.


Marc J. Halpern

Food Processing

BEST AVAILABLE COPY



Issue Date: November 2003, Posted On: 10/15/2003

Humble inspirations, impressive destinations
Marc Halperin, Contributing Editor



If you want to figure out what the nation's style mavens will be wearing this season, you could scope out Milan's runways, take note of the jackets and hemlines on display during any given episode of "Sex and the City," or talk to buyers for the nation's largest retail apparel chains.

But if you want to get a sense of what people may be wearing a bit further down the road, say, say, in a year or so, you'd probably need to lace up your hi-tops and venture out to fashion-forward areas in urban neighborhoods, to the places where trends originate. Simply put, you've got to hit the streets. After all, hip kids from Seattle to the South Bronx attacked their jeans with scissors and razor blades years before branding gurus thought of selling denim with strategically placed rips, holes and tears in the fabric.

In many ways, the same principles apply when you're trying to forecast food trends. Some of the most enduring and beloved staples of the American diet, as well as many of the hottest dishes on today's restaurant menus, trace their origins not to fancy restaurant kitchens or gourmet cookbooks, but to street foods, simple, quick, portable dishes served from carts, trucks, sidewalk stands, roadside grills and other pedestrian sources.

Speaking of pedestrians, they're the reason street foods came to be in the first place. Without foot traffic, the Central Park hot dog hawker, the Singapore satay seller, the Delhi samosa dealer, and the Venezuelan arepa vendor would all be, well, "out on the street." But virtually anywhere in the world where throngs mill and meander along crowded city streets, you'll find enterprising entrepreneurs waiting to serve them. The convenient, creative and delicious foods have a habit of showing up in wonderful, surprising ways in wonderful, surprising places.

Take, for instance, San Francisco's Destino, recently named one of the 50 best Latin restaurants in the nation by *Hispanic* magazine. Owner and chef James Schenk says the street foods he has sampled on his 22 trips to Peru over the years exerted a profound influence on his palate and culinary ambitions. On his menu today, for instance, are *anticuchos de Corazon* – marinated skewers of beef heart in a tangy *aji panca* sauce – representing his elegant, inventive twist on a traditional Lima street comer favorite. Elsewhere, Schenk offers empanadas – another Latin-American Main Street mainstay – filled either with grilled chicken, black mint and currants, or with pork loin picadillo, pimienta stuffed olives and cinnamon mojo.

Down to the Mission

So where does Schenk look for ideas and inspiration today? Hint: There are no white tablecloths. "I go down to the Mission (neighborhood in San Francisco) to see what the vendors there are up to! I wander around and talk to people and see what's new." What's caught his eye lately are trucks of vendors selling grilled corn on the cob

doused with parmesan, butter and cracked pepper. "I've been thinking that we might be able to play around with that," he says.

Like Schenk, Farina Wong Kingsley, author of "Asian" (published by Williams-Sonoma), also watches what people eat on the street during her travels. "In many Southeast Asian cities, street food is all about eating inexpensively and in small portions all through the day," she says. "It's so hot that, much of the time, people simply pour into the street. And it's social; they visit with vendors."

Kingsley notes that vendors typically specialize in one particular dish, such as fried or steamed dumplings served with dipping sauces, or marinated meat or vegetable skewers, items you can "grab as you're passing by on a bike or on foot."

"Many Asian street foods transfer well to upscale dining in the U.S. because they're basically simple foods that can be refined," Kingsley observes. "There's an appreciation of the various sweet, sour and salty flavors at that level of dining."

Here in 21st century North America, where all but a handful urban centers lack the foot traffic needed to sustain vibrant, thriving street-food markets, fast-food restaurants have more or less stepped in to take their place. Cheeseburgers, fries and chicken nuggets are freeway foods for a freeway culture. As more and more manufacturers and quick-serve operators scramble to find new ways to serve a culture whose quickened pace has spawned a whole new market for "dashboard dining," we'll continue to see variations on the ubiquitous breakfast bar, hot pocket, sippable soup and other transit-friendly fare that has transformed the meaning of a "quick bite."

One fellow I know actually has a patent pending on a way to fold a pizza slice, a twist that could make this quintessential convenience food even more convenient. It may not be what they're eating in Milan this season, but it just may catch on with the ripped-jean set.

As culinary director and partner at San Francisco's Center for Culinary Development and as a trained chef, Marc Halperin assists leading food and beverage companies with new product development and consumer research. E-mail him with your questions or suggestions for future columns at mhalperin@ccdsf.com.

BEST AVAILABLE COPY